

APPEAL NO. 030162
FILED FEBRUARY 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 10, 2002. The hearing officer determined that the appellant's (claimant) compensable cervical injury did not extend to thoracic outlet syndrome (TOS).

The claimant appealed, basically on sufficiency of the evidence grounds citing evidence which might lead to a contrary conclusion. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant, a sales representative for a food service company, sustained a compensable injury lifting some freezer bags out of a vehicle on _____. The carrier accepted a cervical injury and the claimant had cervical spine surgery on January 27, 1999, and again on January 17, 2000. The first mention of symptoms consistent with TOS was in a report dated June 17, 1999. The claimant's treating doctor referred the claimant to a specialist for evaluation of TOS on April 13, 2000. A number of doctors have evaluated the claimant and as the claimant asserts, nearly all the doctors agree that the claimant has TOS, or symptoms of TOS, with the question being whether the compensable injury caused or extended to the TOS.

The claimant had the burden of proving that her compensable injury was a producing cause of her TOS. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). Because causation in this case was not within common experience, the claimant was required to meet her burden of proof with expert evidence to a reasonable degree of medical probability. Schaefer v. Texas Employer's Insurance Association, 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). Although the treating doctor is of the opinion that the compensable injury caused the TOS, and TOS symptoms were masked by the cervical problems, other doctors, including a Texas Workers' Compensation Commission required medical examination doctor were of the opinion that the TOS was an ordinary disease of life and "an independent entity from her initial injury."

The medical evidence was in conflict in regard to the disputed issue and the evidence was sufficient to support the determinations of the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true regarding medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Where there are conflicts in the evidence, the hearing officer

resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **POTOMAC INSURANCE COMPANY OF ILLINOIS** and the name and address of its registered agent for service of process is

**C.J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75206.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge